



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Dan Backer, Esq.
Christina Sirois, Esq.
DB Capitol Strategies PLLC
203 South Union Street, Suite 300
Alexandria, VA 22314

MAY 10 2016

RE: MUR 6639
Gary Johnson 2012, Inc.

Dear Mr. Backer and Ms. Sirois:

On September 11, 2012, the Federal Election Commission (the "Commission") notified your clients, Gary Johnson 2012, Inc. and Chet S. Goodwin in his official capacity as treasurer, of a complaint filed in MUR 6639 alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided them with a copy of the complaint. On July 20, 2015, in AR 15-06, the Commission notified Gary Johnson 2012, Inc. and Joseph Lilly in his official capacity as treasurer (the "Committee"), that in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that the Committee may have violated the Act.

After reviewing the allegations contained in the complaint, the information obtained by the Commission in the normal course of carrying out its supervisory responsibilities, and your clients' responses, the Commission on April 26, 2016, found reason to believe that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to disclose \$447,567 in debts and obligations, and 11 C.F.R. § 102.9(e) by using \$12,396 in general election contributions for primary election expenses. The Commission dismissed the allegations that the Committee violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly itemize disbursements and debts. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your client violated the law.

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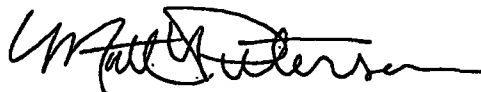
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If your client is interested in engaging in pre-probable cause conciliation, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your client is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chairman

Enclosures
Factual and Legal Analysis

cc: candidate

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Gary Johnson 2012, Inc. and Joseph Lilly
7 in his official capacity as treasurer¹

MUR 6639

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9 **I. INTRODUCTION**

10 This matter was generated by a Complaint filed with the Federal Election Commission.
11 ("Commission") and information ascertained by the Commission in the normal course of
12 carrying out its supervisory responsibilities. The Complaint alleges that Gary Johnson 2012, Inc.
13 and Joseph Lilly in his official capacity as treasurer ("Gary Johnson 2012") violated the Federal
14 Election Campaign Act of 1971, as amended, (the "Act") by failing to properly disclose
15 disbursements and debts owed to an entity called "Political Advisors" of Salt Lake City in its
16 2012 June, July, and August Monthly Reports.² The Complaint further alleges that Gary
17 Johnson 2012 failed to specify whether the reports themselves or the disbursements on those
18 reports were for the primary or general election, despite having reported receiving contributions
19 designated for the general election.³ The Audit Division also referred Gary Johnson 2012 to the
20 Office of the General Counsel for possible enforcement action regarding: (1) the use of general
21 election contributions for primary election expenses; and (2) the failure to report a total of
22 \$447,567 in debts and obligations.⁴

¹ On July 6, 2015, Gary Johnson 2012, Inc. filed an Amended Statement of Organization naming Joseph Lilly as its new treasurer. See Amended Statement of Organization at 1 (July 6, 2015).

² Compl. at 1-3.

³ *Id.*

⁴ See Referral at 1-7.

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1 For the reasons discussed below, the Commission dismisses the Complaint's allegation
2 that Gary Johnson 2012 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 because the
3 committee reported multiple purposes for each disbursement or debt. Nevertheless, based on the
4 facts, analysis, and findings set forth in the Final Audit Report, which is incorporated by
5 reference, the Commission finds reason to believe that Gary Johnson 2012 violated 52 U.S.C.
6 § 30104(b) and 11 C.F.R. § 104.3 by failing to disclose \$447,567 in debts and obligations, and
7 violated 11 C.F.R. § 102.9(e) by using general election contributions for primary election
8 expenses.

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Failure to Properly Itemize Disbursements and Debts**

11 On its 2012 June Monthly Report, Gary Johnson 2012 reported ten different
12 disbursements totaling \$188,320 to "Political [sic] Advisors" for the purpose of "Media Buys,
13 Candidate [sic] Travel, Campaign advisory and management."⁵ Next, on the 2012 July Monthly
14 Report, it reported 12 different disbursements totaling \$113,250 to "Political [sic] Advisors" for
15 the purpose of "Media Buys, Advertising, Candidate Travel, Advisory Services."⁶ And on the
16 2012 August Monthly Report, it reported eight disbursements totaling \$284,500 to "Political [sic]
17 Advisors" for the purpose of "Media Buys, Advertising, Candidate Travel, Advisory Services"
18 or "Media, Travel and Advisory Services in connection with Primary Election."⁷ In addition to
19 these disbursements, Gary Johnson 2012's 2012 July and August Monthly Reports listed four
20 separate new debts totaling \$304,145 owed to "Political [sic] Advisors" for the purposes of

⁵ Compl. at 2.

⁶ *Id.*

⁷ *Id.* at 3.

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1 “Advertsing [sic], Canidate [sic] Travel, Media Buys, Advisory Services,” “Media, Travel,
2 Advertising and Advisory Service – Primary,” “Travel, Media, Advertsing [sic],” and “Travel,
3 Media, Advertising, and Advisory” on Schedule D.⁸

4 The Complaint in MUR 6639 alleges that Gary Johnson 2012 did not properly disclose
5 the disbursements and debts owed to “Political Advisors” in its 2012 June, July, and August
6 Monthly Reports because it reported multiple purposes for each disbursement or debt.⁹ On
7 February 11, 2013, the Reports Analysis Division (“RAD”) sent Gary Johnson 2012 Requests for
8 Additional Information (“RFAIs”) inquiring about those disbursement descriptions.¹⁰ The RFAIs
9 requested that the committee amend its reports to clarify the descriptions listed above.¹¹

10 On February 25, 2013, Gary Johnson 2012 amended the reports in question to disclose
11 additional debts and obligations owed to Political Advisors.¹² These debts appear to correspond
12 to the previously reported disbursements to Political Advisors. For each itemized debt reported
13 on Schedule D, however, Gary Johnson 2012 continued to report multiple purposes. For
14 example, on its Amended 2012 June Monthly Report, the committee reported a new \$112,937
15 debt to Political Advisors for “Staff Hours – Mid-Level, Senior Political Advsiors [sic], Creative
16 Advertising, Campain [sic] Consult.”¹³ The committee included a memo entry for each itemized

⁸ See *id.* at 2.

⁹ *Id.*

¹⁰ See 2012 June Monthly Report RFAI (Feb. 11, 2013); 2012 July Monthly Report RFAI (Feb. 11, 2013); 2012 August Monthly Report RFAI (Feb. 11, 2013).

¹¹ *Id.*

¹² See Amended 2012 June Monthly Report (Feb. 25, 2013); Amended 2012 July Monthly Report (Feb. 25, 2013); Amended 2012 August Monthly Report (Feb. 25, 2013).

¹³ See Amended 2012 June Monthly Report at 81 (Feb. 25, 2013).

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1 debt that provided a more detailed breakdown of each invoice that accounted for the debt.¹⁴
2 However, the committee also amended its previously reported disbursements on Schedule D to
3 change the purposes to "Payment on obligation."¹⁵

4 The Act and Commission regulations require political committees to itemize
5 disbursements and debts, and, for each disbursement and debt, provide information including a
6 brief description of the purpose of the disbursement or the nature of the debt.¹⁶ Descriptions,
7 when considered along with the identity of the disbursement recipient, must be sufficiently
8 specific to make the purpose of the disbursement clear.¹⁷ The Commission has noted in its
9 Statement of Policy regarding purpose of disbursement entries that a disbursement to a vendor
10 for something like "consulting" would be inadequate unless the vendor's name included the
11 specific type of consulting that the vendor engaged in, such as "Smith Fundraising Consulting,
12 Inc."¹⁸ Examples of inadequate purposes listed in the Commission's Statement of Policy include
13 "Consulting Service," "Compensation," and "Invoice."¹⁹

14 The disbursements and debts on the three original reports addressed in the Complaint —
15 and on all Gary Johnson 2012's reports through the 2012 Year-End Report — were reviewed in
16 the Title 26 audit. The Final Audit Report did not include any finding related to the ultimate
17 payee or purpose description of disbursements and debts to Political Advisors. Some purpose

¹⁴ See *id.* at 82.

¹⁵ See *id.* at 72-75.

¹⁶ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b)(3)-(4), (d).

¹⁷ 11 C.F.R. § 104.3(b)(3)-(4); "Purpose of Disbursement" Entries for Filings with the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007).

¹⁸ 72 Fed. Reg. at 888.

¹⁹ *Id.*

1 descriptions, standing alone, appear to have been inadequate (e.g., "advisory service,"
2 "advisory," and "payment on obligation"), but they were combined with purpose descriptions
3 that appear to have been adequate (e.g., "media buys," "advertising," and "candidate travel").
4 In light of the corrective action taken during the Audit and in response to RFAs, the
5 Commission exercises its prosecutorial discretion and dismisses the allegation that Gary Johnson
6 2012 violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3 by failing to properly itemize
7 disbursements and debts.²⁰

8 **B. Failure to Report Debts and Obligations**

9 The Complaint in MUR 6639 alleges that Gary Johnson 2012 failed to report any
10 indebtedness to Political Advisors on its 2012 June and August Monthly Reports.²¹ As set forth
11 in the Final Audit Report, the Commission concluded that Gary Johnson 2012 failed to disclose
12 \$447,567 in debts owed to nine vendors on Schedule D.²² Of this amount, \$300,000 was a debt
13 owed to Political Advisors²³ for a bonus after Johnson received the Libertarian Party nomination.
14 According to the audit finding, Gary Johnson 2012 reported half of the \$300,000 debt when it
15 was invoiced in December 2012, but, per the contract, the entire debt was incurred on May 4,
16 2012, and accordingly should have been reported on the committee's 2012 June Monthly

²⁰ See *Heckler v. Chaney*, 470 U.S. 821 (1985); see also Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (noting that the Commission will dismiss a matter when the matter does not merit further use of Commission resources).

²¹ Compl. at 1-3.

²² Final Audit Report at 22-25.

²³ The Final Audit Report refers to this entity as "NSON," which is the corporation listed on the committee's contracts and invoices. The Final Audit Report notes that NSON also does business as Political Advisors. *Id.* at 6 n.7. The committee reported all disbursements and debts to Political Advisors, not NSON. *Id.*

1 Report.²⁴ In response to the audit, Gary Johnson 2012 filed amendments that materially
2 corrected the omissions.²⁵

3 The Act requires committee treasurers to file reports of receipts and disbursements in
4 accordance with the provisions of 52 U.S.C. § 30104.²⁶ The reports also must include the
5 amount and nature of outstanding debts and obligations owed by or to the political committee.²⁷
6 Accordingly, because it failed to disclose \$447,567 in debts and obligations as described above,
7 the Commission finds reason to believe that Gary Johnson 2012 violated 52 U.S.C. § 30104(b)
8 and 11 C.F.R. § 104.3.

9 **C. Use of General Election Contributions for Primary Election Expenses**

10 The Complaint in MUR 6639 alleges that Gary Johnson 2012 failed to disclose whether
11 its disbursements were for the primary or general election, despite having reported receiving
12 contributions designated for the general election.²⁸ In the audit, the Commission found that Gary
13 Johnson 2012 spent \$12,396 in contributions designated for the general election on primary
14 election expenses before the primary election date.²⁹ As described in the Final Audit Report, the
15 committee deposited \$22,396 in general election contributions in its primary election account,
16 and then made primary election expenses from this account.³⁰ Beginning on February 21, 2012,

²⁴ *Id.* at 22-25.

²⁵ *Id.*

²⁶ 52 U.S.C. §§ 30104(a)(1), 30104(b)(2)-(7); 11 C.F.R. §§ 104.1(a), 104.3(a)-(c).

²⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. § 104.3(d).

²⁸ Compl. at 1-3.

²⁹ Final Audit Report at 20-22.

³⁰ *Id.*

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1 the committee did not have sufficient primary election contributions to cover its primary election
2 expenses, and accordingly spent \$12,396 in general election contributions for primary election
3 expenses.³¹

4 The Act requires treasurers to keep an account of all contributions received by a political
5 committee.³² Commission regulations permit a candidate's committee to receive contributions
6 for the general election prior to the primary election provided the committee employs an
7 acceptable accounting method to distinguish between primary and general election
8 contributions.³³ The committee's records must demonstrate that prior to the primary election, the
9 committee's recorded cash-on-hand was at all times equal to or in excess of the sum of general
10 election contributions received less the sum of general election disbursements made.³⁴ The
11 Respondents argue that the audit finding applies an unreasonably strict reading of 11 C.F.R.
12 § 102.9(e)(2), and that the funds were essentially a short-term loan between accounts to cover
13 operating expenses.³⁵ However, the Final Audit Report correctly rejects these arguments.
14 Because Gary Johnson 2012 used general election contributions for primary election expenses as
15 described above, the Commission finds reason to believe that Gary Johnson 2012 violated
16 11 C.F.R. § 102.9(e).

³¹ *Id.*

³² 52 U.S.C. § 30102(c).

³³ 11 C.F.R. § 102.9(e)(1).

³⁴ *Id.* § 102.9(c)(2).

³⁵ See AR 15-06 Resp. at 1.

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